



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

November 2, 2022

Memorandum for: Deputy Commissioner, Trials

Re: **Lieutenant Scott Hamburger**
Tax Registry No. 945802
Warrant Section
Disciplinary Case No. 2020-22846

The above named member of the service appeared before Assistant Deputy Commissioner Jeff S. Adler on June 14, 2022, and was charged with the following:

DISCIPLINARY CASE NO. 2020-22846

1. Said Lieutenant Scott Hamburger, while on duty and assigned to Patrol Borough Queens South anti-crime patrol, on or about November 5, 2019, having been involved in a vehicle pursuit, wrongfully failed to notify the radio dispatcher at the beginning or end of the pursuit.

P.G. 221-15, Page 1, Paragraphs 3 & 7

VEHICLE PURSUITS

In a Memorandum dated July 18, 2022, Assistant Deputy Commissioner Jeff S. Adler found Lieutenant Scott Hamburger guilty of the sole Specification in Disciplinary Case No. 2020-22846, after Lieutenant Hamburger entered a plea of guilty. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

After reviewing the facts and circumstances of this matter, I have determined that a higher penalty is warranted. In this matter, Lieutenant Hamburger failed to make any notifications regarding a vehicle pursuit, as required. I find that any mitigating factors that may be present in this case are outweighed by the particular aggravating facts of this matter. Further, notwithstanding Lieutenant Hamburger's excellent department record, his position as the supervisor during this incident must also be considered as an aggravating factor. Thus, a higher penalty is warranted.

Therefore, Lieutenant Hamburger shall forfeit twenty (20) vacation days, as a disciplinary penalty.

A handwritten signature in black ink, appearing to read 'K. Sewell', is positioned above the printed name of the Police Commissioner.

Keechant L. Sewell
Police Commissioner



POLICE DEPARTMENT

July 18, 2022

-----X
In the Matter of the Charges and Specifications :

- against - :

Lieutenant Scott Hamburger :

Tax Registry No. 945802 :

Warrant Section :

Case No.

2020-22846

-----X
At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Ayisha Amjad Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Marissa Gillespie, Esq.
Karasyk & Moschella, LLP
233 Broadway, Suite 2340
New York, NY 10279

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Said Lieutenant Scott Hamburger, while on duty and assigned to Patrol Borough Queens South anti-crime patrol, on or about November 5, 2019, having been involved in a vehicle pursuit, wrongfully failed to notify the radio dispatcher at the beginning or end of the pursuit.

P.G. 221-15, Page 1, Paragraphs 3 & 7

VEHICLE PURSUITS
TACTICAL OPERATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on June 14, 2022.

Respondent, through his counsel, entered a plea of Guilty to the subject charge. He admitted that he failed to alert the radio dispatcher that his police car was involved in a vehicle pursuit, and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. The Department Advocate recommends that Respondent forfeit 20 vacation days, while Respondent argues that 10 days is an appropriate penalty. Having reviewed all of the evidence in this matter, I find that the recommendation of the Department Advocate is excessive, and recommend a penalty of fifteen (15) vacation days.

SUMMARY OF EVIDENCE IN MITIGATION

On the evening of November 5, 2019, Respondent was in an unmarked vehicle with two police officers under his supervision. One of the officers was the operator, the other was the recorder, and Respondent sat in the rear seat. On Jamaica Avenue in Queens, their vehicle was passed in the opposite direction by a Hyundai Sonata, which had a headlight out. The police vehicle made a U-turn, and followed behind the Sonata at a regular rate of speed. (Tr. 22-23, 34)

Respondent testified that he used his Department phone to do a license plate check on the Sonata, which revealed that the car had been reported stolen 15 minutes earlier. Based on this information, the officers turned on their turret lights and attempted to initiate a stop of the Sonata. The driver of the Sonata did not pull over; instead, he ran a red light and continued driving, with the police vehicle following behind. Respondent admits that he did not notify the radio dispatcher that they were involved in a vehicle pursuit. (Tr. 24-25, 27, 36-37)

After the driver of the Sonata refused to pull over, Respondent used his Department phone to call a sergeant, whom he knew was also out in an unmarked vehicle at the time. Respondent explained the situation to the sergeant, with the hope that the sergeant would take over the pursuit of the Sonata. Respondent testified that since the driver of the Sonata had recognized Respondent and his colleagues to be police officers, the hope was that the sergeant could unobtrusively follow the Sonata until the driver, believing that he no longer was being pursued, exited the car; at that point, the driver could safely be apprehended. Again, Respondent concedes that he did not notify the dispatcher as to the status of the pursuit. (Tr. 25-26, 38)

Meanwhile, on Archer Avenue the driver of the Sonata sped up to in excess of 60 mph. Respondent's vehicle pulled back and traveled at a significantly slower rate, more than a block behind the Sonata; at no point did the police car exceed 49 mph. Respondent testified that at some point, the front seat passenger of the police car alerted him that the driver of the Sonata was now fleeing on foot toward the subway; the entire incident up until that point had lasted less than four minutes, with the actual vehicle pursuit even less than that. (Tr. 27-30, 39, 43, 48)

Respondent exited his vehicle and pursued the driver on foot, but Respondent fell on the subway stairs. A bystander pointed in the direction of an adjacent staircase leading back up to the street, and so Respondent returned to street-level, where he observed a crowd of people

surrounding the stolen Sonata. Respondent testified that he rushed to the car believing that the driver was there, but instead observed a woman pinned under the vehicle; apparently, the driver had left the car in drive after he exited, and the Sonata had struck this woman. For the first time during the incident, Respondent notified the dispatcher regarding what had transpired.

Respondent and others lifted the vehicle off of the woman, who was transported to a hospital. Tragically, the woman did not survive. The driver fled the location, which Respondent described as a commercial area with many pedestrians, and was subsequently apprehended in a different city; the driver now faces manslaughter charges in connection with this incident. (Tr. 30-33, 40-43, 49-50)

Respondent explained that the reason he did not notify the dispatcher during the pursuit was his concern that having additional marked cars converge would potentially make the situation more dangerous, putting the officers and the public at risk. He acknowledged, though, that by failing to do so, his actions were contrary to the requirements of the Patrol Guide. (Tr. 44-47)

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on January 7, 2008, has pleaded guilty to failing to notify the radio dispatcher regarding a vehicle pursuit. Specifically,

Respondent, who was supervising the two officers with him in an unmarked police car, participated in the pursuit of a vehicle that had just been reported stolen. Rather than call in the pursuit, Respondent attempted to manage it on his own, by having his driver slow down when the Sonata sped up, and by trying to enlist the help of another unmarked unit. At some point, the driver of the Sonata exited his vehicle while it was still in motion, and the car struck a woman bystander.

Tragically, the woman who was struck by the vehicle died from her injuries. As counsel for Respondent noted, it was the driver of the Sonata, and *not* Respondent, who was responsible for the death of the woman. Nevertheless, as this Tribunal observed Respondent on the witness stand and at the defense table, it was visibly clear how much this incident still weighs on him.

As Respondent, himself, admitted, his conduct here did run afoul of the Patrol Guide's procedures, which explicitly require that the dispatcher be notified at the beginning and end of a vehicle pursuit. Those procedures serve an important purpose, as they ensure that appropriate notifications are made by a dispatcher who is trained to do so, and that there is a coordinated response to the incident. By taking it upon himself not to make the required notifications, Respondent wrongfully restricted the flow of information as the incident was unfolding. With his actions, Respondent, an experienced supervisor, impacted the ability of the Department to handle the matter as safely and responsibly as possible, and there must be appropriate accountability.

The Department Advocate recommends that Respondent forfeit 20 vacation days, while counsel for Respondent argues that a lesser penalty of 10 days is appropriate here. In their closing arguments, both sides suggested that the Disciplinary Guidelines do not specifically address the misconduct in this case, and relied instead on case precedent.

As a starting point, the Disciplinary Guidelines do include a relevant section: “Vehicle Pursuits that are outside Department guidelines and related policy violations.” That section falls within the list of Schedule “C” Command Discipline offenses, and carries a penalty range of up to 20 days. The charge in this case, that Respondent failed to notify the radio dispatcher during a vehicle pursuit, might fairly be considered a “related policy violation.” The task, then, is to determine an appropriate penalty within the suggested range of up to 20 days.

Based on case precedent, the baseline penalty for offenses such as this is in the range of 10-15 vacation days. In *Disciplinary Case No. 2017-17565* (June 8, 2018), a seven-year sergeant with no disciplinary record negotiated a penalty of 10 vacation days for comparable misconduct. There, the respondent was an anti-crime supervisor who, along with his operator, engaged in a vehicle pursuit. Their RMP reached speeds of 56 mph and 76 mph at different points during the pursuit, which ended when the pursued vehicle crashed into another car, causing serious physical injuries to that car’s four occupants. In addition to the charge of failing to notify the radio dispatcher, the sergeant also was charged with wrongfully failing to terminate the pursuit.

In *Disciplinary Case No. 2018-18947* (Aug. 2, 2019), cited by both attorneys in their closing arguments, a four-year police officer with no disciplinary record agreed to forfeit 12 vacation days for failing to maintain contact with the radio dispatcher during a seven-minute vehicle pursuit in which the pursued vehicle eventually crashed. That respondent, who was the RMP’s recorder, also pled guilty for his part in failing to terminate the pursuit. The slight upward departure from 10 days to 12 days was warranted there based on the public danger inherent in the high-speed pursuit, during which the RMP ran several red lights and reached a speed of 69 mph, at approximately 1500 hours on a school day in a residential area.

Here, the Department Advocate argues that an even higher upward departure to 20 days is appropriate, based on Respondent's extra degree of responsibility as a supervisor during this incident. To be sure, more is expected of someone with Respondent's experience. At the same time, the Advocate's recommendation overlooks several factors in Respondent's favor. For instance, in the first of the two cases cited above, the respondent there also was a supervisor, and he received a penalty of 10 vacation days. Also, in both of the cited cases, those respondents were additionally charged and penalized for failing to terminate the pursuit, a charge *not* faced by Respondent in the present case; he faces only one specification, for failure to notify the dispatcher.

Additionally, the maximum speed the police car reached during the brief pursuit in this case was 49 mph, which is considerably lower than that in the other cases cited. Respondent took steps to avoid making the pursuit dangerous, by having his driver slow down when the Sonata sped up, and then attempted to have another unmarked unit quietly take over the pursuit so the Sonata driver would not be aware he was being followed. He also explained that the reason he did not notify the radio dispatcher was out of concern that multiple units would be summoned to the pursuit, which would make the situation more dangerous.

Aside from the factors discussed above, this Tribunal is mindful of how sincerely aggrieved Respondent is by this incident, making it unlikely that he will repeat such misconduct in the future. Also, Respondent has an extremely strong record with the Department, another mitigating factor in his favor. Respondent has no disciplinary record, and has received consistently exceptional performance evaluations. He has been awarded 21 medals for Excellent Police Duty, and 10 for Meritorious Police Duty.

On balance, I find that the Department Advocate's recommendation of 20 days is excessive, and that a lesser penalty involving the forfeiture of fewer vacation days is reasonable and adequate to address the misconduct in this case. Taking into account the totality of the facts and circumstances in this matter, I recommend that Respondent forfeit fifteen (15) vacation days.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
LIEUTENANT SCOTT HAMBURGER
TAX REGISTRY NO. 945802
DISCIPLINARY CASE NO. 2020-22846

Respondent was appointed to the Department on January 7, 2008. On his three most recent annual performance evaluations, he twice received 5.0 overall ratings of “Extremely Competent” for 2020 and 2021, and received a 4.5 rating of “Extremely Competent/Highly Competent” for 2019. He has been awarded 21 medals for Excellent Police Duty and 10 medals for Meritorious Police Duty.

Respondent has no disciplinary history. In connection with the instant matter, he was placed on Level 1 Discipline Monitoring in September 2021; monitoring remains ongoing.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials